

Introduced by Senator Figueroa

December 4, 2000

An act to amend Sections 805, 805.1, and 805.5 of, and to add Sections 805.6 and 805.7 to, the Business and Professions Code, relating to peer review.

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as introduced, Figueroa. Peer review.

Existing law provides a procedure for the professional review of specified healing arts licentiates by a peer review body, defined as including, among other entities, a nonprofit hospital service plan. Under existing law, a peer review body is required to file with the agency having regulatory jurisdiction over the licentiate a report, designated as an "805" report, if the peer review body takes one of several specified actions against the licentiate. Existing law makes the failure to file this report punishable by a fine of not more than \$5,000, or if the failure is intentional, by a fine of not more than \$10,000.

This bill would delete a nonprofit hospital service plan from those entities included within the definition of a peer review body and would specify that an osteopathic physician and surgeon licentiate is subject to the professional peer review process.

This bill would add to the specified actions that a peer review body is required to report in an 805 report to the relevant licensing agency the licentiate's withdrawal or abandonment of an initial or renewal application for staff privileges or membership after notice of an impending investigation or denial of the application for a medical disciplinary cause or reason. This bill would also increase the amount of the fine for the failure to file an 805 report to not more than \$50,000, and to not more than \$100,000 if the failure is intentional. The bill



would specify that the intentional failure to file an 805 report by a licensed healing arts practitioner constitutes unprofessional conduct. This bill would authorize the Medical Board of California, the Osteopathic Medical Board of California, and Dental Board of California to audit, as specified, any peer review body to determine its compliance with its responsibilities to file 805 reports and to establish an electronic notification system, as specified, of the filing of 805 reports.

This bill would additionally require the Medical Board of California to establish a pilot program to provide specified health care professionals remedial training and education.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) Peer review is an essential component of the regulation by
4 certain licensing agencies of the quality of health care practice in
5 this state and of the health care community's responsibility to
6 engage in active self-regulation of the quality of health care
7 services provided to Californians. Because licensed health care
8 practitioners and the administrators of the facilities within which
9 these licentiates practice are in the best position to observe the
10 quality of health care services being provided to the public, it is
11 appropriate for licentiates to participate in early intervention and
12 quality improvement review of their peers. To this end, it is
13 important for a maximum level of cooperation to exist between the
14 relevant licensing agencies and peer review bodies.

15 (b) To the extent possible, and consistent with the primary duty
16 to protect the public, licensing agencies shall attempt to investigate
17 information derived from reports filed pursuant to Section 805 of
18 the Business and Professions Code in a manner that is not
19 disruptive of a patient's privacy or a licentiate's practice.
20 Specifically, unless an investigation warrants a greater intrusion
21 into a particular identifiable patient's medical information, a
22 licensing agency shall attempt to conduct initial reviews by using
23 redacted records and other sources of information. However,
24 nothing in this act shall be construed to narrow, qualify, or overrule



1 the authority of a licensing agency to obtain access to patient
2 information if it is necessary in order to completely and accurately
3 investigate a report concerning its licentiates.

4 (c) The procedures set forth in this act for the assessment and
5 imposition of penalties for noncompliance with reporting
6 requirements are intended to clarify existing law and do not
7 represent a substantive change in the law.

8 SEC. 2. Section 805 of the Business and Professions Code is
9 amended to read:

10 805. (a) As used in this section, the following terms have the
11 following definitions:

12 (1) “Peer review body” includes:

13 (A) A medical or professional staff of any health care facility
14 or clinic licensed under Division 2 (commencing with Section
15 1200) of the Health and Safety Code or of a facility certified to
16 participate in the federal Medicare program as an ambulatory
17 surgical center.

18 (B) A health care service plan registered under Chapter 2.2
19 (commencing with Section 1340) of Division 2 of the Health and
20 Safety Code ~~or a nonprofit hospital service plan regulated under~~
21 ~~Chapter 11a (commencing with Section 11491) of Part 2 of~~
22 ~~Division 2 of the Insurance Code.~~

23 (C) Any medical, psychological, marriage and family therapy,
24 social work, dental, or podiatric professional society having as
25 members at least 25 percent of the eligible licentiates in the area
26 in which it functions (which must include at least one county),
27 which is not organized for profit and which has been determined
28 to be exempt from taxes pursuant to Section 23701 of the Revenue
29 and Taxation Code.

30 (D) A committee organized by any entity consisting of or
31 employing more than 25 licentiates of the same class ~~which~~ *that*
32 functions for the purpose of reviewing the quality of professional
33 care provided by members or employees of that entity.

34 (2) “Licentiate” means a physician and surgeon, *osteopathic*
35 *physician and surgeon*, podiatrist, clinical psychologist, marriage
36 and family therapist, clinical social worker, or dentist.

37 “Licentiate” also includes a person authorized to practice
38 medicine pursuant to Section 2113.

1 (3) “Agency” means the relevant state licensing agency
2 having regulatory jurisdiction over the licentiates listed in
3 paragraph (2).

4 (4) “Staff privileges” means any arrangement under which a
5 licentiate is allowed to practice in or provide care for patients in
6 a health facility. Those arrangements shall include, but are not
7 limited to, full staff privileges, active staff privileges, limited staff
8 privileges, auxiliary staff privileges, provisional staff privileges,
9 temporary staff privileges, courtesy staff privileges, locum tenens
10 arrangements, and contractual arrangements to provide
11 professional services, including, but not limited to, arrangements
12 to provide outpatient services.

13 (5) “Denial or termination of staff privileges, membership, or
14 employment” includes failure or refusal to renew a contract or to
15 renew, extend, or reestablish any staff privileges, ~~when~~ if the
16 action is based on medical disciplinary cause or reason.

17 (6) “Medical disciplinary cause or reason” means that aspect
18 of a licentiate’s competence or professional conduct which is
19 reasonably likely to be detrimental to patient safety or to the
20 delivery of patient care.

21 (7) “805 report” means the written report required under
22 subdivision (b).

23 (b) The chief of staff of a medical or professional staff or other
24 chief executive officer, medical director, or administrator of any
25 peer review body and the chief executive officer or administrator
26 of any licensed health care facility or clinic shall file an 805 report
27 with the relevant agency whenever any of the following actions are
28 taken as a result of a determination of a peer review body:

29 (1) A licentiate’s application for staff privileges or membership
30 is denied or rejected for a medical disciplinary cause or reason.

31 (2) A licentiate’s membership, staff privileges, or employment
32 is terminated or revoked for a medical disciplinary cause or reason.

33 (3) Restrictions are imposed, or voluntarily accepted, on staff
34 privileges, membership, or employment for a cumulative total of
35 30 days or more for any 12-month period, for a medical
36 disciplinary cause or reason.

37 In addition to the duty to report as set forth in paragraphs (1),
38 (2), and (3), the peer review body also has a duty to report under
39 this section a licentiate’s resignation or leave of absence from
40 membership, staff, or employment following notice of an

1 impending investigation based on information indicating medical
2 disciplinary cause or reason *and the withdrawal or abandonment*
3 *of a licentiate's application for staff privileges or membership or*
4 *for the renewal of those privileges or membership is withdrawn or*
5 *abandoned following notice of either an investigation or the*
6 *impending denial or rejection of the application for a medical*
7 *disciplinary cause or reason.*

8 The 805 report shall be filed within 15 days after the effective
9 date of the denial, termination, restriction, resignation, or leave of
10 absence, or after the exhaustion of administrative procedures,
11 without regard to any filing for judicial review.

12 An 805 report shall also be filed within 15 days following the
13 imposition of summary suspension of staff privileges,
14 membership, or employment, if the summary suspension remains
15 in effect for a period in excess of 14 days. *However, if the peer*
16 *review body has determined that the licentiate does not pose an*
17 *immediate threat to public health and safety as a result of the*
18 *licentiate's practice and an active investigation is in progress to*
19 *determine whether the basis of the summary suspension is*
20 *factually supported, the 15-day period may be extended to 30 days.*
21 *If the report is filed after 15 days as a result of an active*
22 *investigation that has not been completed, the report shall explain*
23 *the reasons that the investigation was not completed within 15*
24 *days.*

25 A copy of the 805 report, and a notice advising the licentiate of
26 his or her right to submit additional statements or other
27 information pursuant to Section 800, shall be sent by the peer
28 review body to the licentiate named in the report.

29 The information to be reported in an 805 report shall include the
30 name of the licentiate involved, a description of the facts and
31 circumstances of the medical disciplinary cause or reason, and any
32 other relevant information deemed appropriate by the reporter.

33 A supplemental report shall also be made within 30 days
34 following the date the licentiate is deemed to have satisfied any
35 terms, conditions, or sanctions imposed as disciplinary action by
36 the reporting peer review body. In performing its dissemination
37 functions required by Section 805.5, the agency shall include a
38 copy of a supplemental report, if any, whenever it furnishes a copy
39 of the original 805 report.

1 In those instances where another peer review body is required
2 to file an 805 report, a health care service plan or nonprofit hospital
3 service plan is not required to file a separate report with respect to
4 action attributable to the same medical disciplinary cause or
5 reason.

6 (c) The reporting required herein shall not act as a waiver of
7 confidentiality of medical records and committee reports. The
8 information reported or disclosed shall be kept confidential except
9 as provided in subdivision (c) of Section 800 and Sections 803.1
10 and 2027, provided that a copy of the report containing the
11 information required by this section may be disclosed as required
12 by Section 805.5 with respect to reports received on or after
13 January 1, 1976.

14 (d) The Medical Board of California, the Osteopathic Medical
15 Board of California, and the Board of Dental Examiners shall
16 disclose reports as required by Section 805.5.

17 (e) An 805 report shall be maintained by an agency for
18 dissemination purposes for a period of three years after receipt.

19 (f) No person shall incur any civil or criminal liability as the
20 result of making any report required by this section.

21 ~~(g) An intentional failure to make a report pursuant to this~~
22 ~~section is a public offense punishable by a fine not to exceed ten~~
23 ~~thousand dollars (\$10,000). An intentional failure by any person~~
24 ~~who is designated or otherwise required by law to file an 805 report~~
25 ~~is punishable by a fine not to exceed one hundred thousand dollars~~
26 ~~(\$100,000) per violation. The fine may be imposed in any civil or~~
27 ~~administrative action or proceeding brought by or on behalf of the~~
28 ~~agency having regulatory jurisdiction over the licentiate charged~~
29 ~~with this violation and shall be paid to that agency but not~~
30 ~~expended until appropriated by the Legislature. The violation of~~
31 ~~this section shall constitute unprofessional conduct by the~~
32 ~~licentiate.~~

33 ~~(h) A failure by the administrator of any peer review body or~~
34 ~~the chief executive officer or administrator of any health care~~
35 ~~facility who is designated to transmit a report pursuant to this~~
36 ~~section whether or not the failure is intentional is punishable by a~~
37 ~~civil penalty not exceeding five thousand dollars (\$5,000) per~~
38 ~~violation payable to the board with jurisdiction over the licensee~~
39 ~~in any action brought by the Attorney General. A failure by the~~
40 ~~administrator of any peer review body, the chief executive officer~~

1 *or administrator of any health care facility, or any person who is*
2 *designated or otherwise required by law to file an 805 report,*
3 *whether or not the failure is intentional, is punishable by a fine not*
4 *exceeding fifty thousand dollars (\$50,000) per violation. The fine*
5 *may be imposed in any civil or administrative action or proceeding*
6 *brought by or on behalf of the agency having regulatory*
7 *jurisdiction over the licensee charged with this violation and*
8 *shall be paid to that agency but not expended until appropriated*
9 *by the Legislature.*

10 *(i) Notwithstanding any other provision of law, the State*
11 *Department of Health Services may bring an action pursuant to*
12 *subdivisions (g) and (h) against any hospital, clinic, or other*
13 *health facility under its jurisdiction if any officer, agent, or*
14 *employee of the hospital, clinic, or other health facility fails to*
15 *comply with any duty imposed by this section.*

16 SEC. 3. Section 805.1 of the Business and Professions Code
17 is amended to read:

18 805.1. (a) The Medical Board of California, the Osteopathic
19 Medical Board of California, and the ~~Board of Dental Examiners~~
20 *Board of California* shall be entitled to inspect and copy the
21 following documents in the record of any disciplinary proceeding
22 resulting in action ~~which~~ *that* is required to be reported pursuant
23 to Section 805:

24 (1) Any statement of charges.

25 (2) Any document, medical chart, or exhibits in evidence.

26 (3) Any opinion, findings, or conclusions.

27 (b) The information so disclosed shall be kept confidential and
28 not subject to discovery, in accordance with Section 800, except
29 that it may be reviewed, as provided in subdivision (c) of Section
30 800, and may be disclosed in any subsequent disciplinary hearing
31 conducted pursuant to the Administrative Procedure Act (Chapter
32 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
33 2 of the Government Code).

34 (c) *Each agency specified in subdivision (a) may audit the*
35 *records of any peer review body to determine whether the peer*
36 *review body is in compliance with, or has complied with, the*
37 *requirements of Section 805. The agency may conduct these audits*
38 *in conjunction with the State Department of Health Services.*
39 *Nothing in this subdivision shall require these agencies to*

1 *establish a comprehensive auditing program for all peer review*
2 *bodies that review the licentiates of the agency.*

3 *(d) Each agency specified in subdivision (a) shall use redacted*
4 *records and other sources of information in conducting an initial*
5 *audit review unless an investigation warrants a greater intrusion*
6 *into particular identifiable patients' private medical information.*

7 *(e) Nothing in this section shall be construed to narrow, qualify,*
8 *or overrule the authority of a licensing agency to obtain access to*
9 *patient information if it is necessary in order to completely and*
10 *accurately investigate a report concerning its licensee.*

11 SEC. 4. Section 805.5 of the Business and Professions Code
12 is amended to read:

13 805.5. (a) Prior to granting or renewing staff privileges for
14 any physician and surgeon, psychologist, podiatrist, or dentist, any
15 health facility licensed pursuant to Division 2 (commencing with
16 Section 1200) of the Health and Safety Code, or any health care
17 service plan or medical care foundation, or the medical staff of any
18 such institution, shall request a report from the Medical Board of
19 California, the Board of Psychology, the Osteopathic Medical
20 Board of California, or the ~~Board of Dental Examiners~~ *Board of*
21 *California* to determine if any report has been made pursuant to
22 Section 805 indicating that the applying physician and surgeon,
23 psychologist, podiatrist, or dentist has been denied staff privileges,
24 been removed from a medical staff, or had his or her staff
25 privileges restricted as provided in Section 805. The request shall
26 include the name and California license number of the physician
27 and surgeon, psychologist, podiatrist, or dentist. Furnishing of a
28 copy of the 805 report shall not cause the 805 report to be a public
29 record.

30 (b) Upon a request made by, or on behalf of, an institution
31 described in subdivision (a) or its medical staff, which is received
32 on or after January 1, 1980, the board shall furnish a copy of any
33 report made pursuant to Section 805. However, the board shall not
34 send a copy of a report (1)~~where~~ *if the denial, removal, or*
35 *restriction was imposed solely because of the failure to complete*
36 *medical records, (2)~~where~~ if the board has found the information*
37 *reported is without merit, or (3)~~where~~ if a period of three years has*
38 *elapsed since the report was submitted. This three-year period*
39 *shall be tolled during any period the licensee has obtained a*
40 *judicial order precluding disclosure of the report, unless the board*

1 *is finally and permanently precluded by judicial order from*
2 *disclosing the report. In the event a request is received by the board*
3 *while the board is subject to a judicial order limiting or precluding*
4 *disclosure, the board shall provide a disclosure to any qualified*
5 *requesting party as soon as practicable after the judicial order is*
6 *no longer in force.*

7 In the event that the board fails to advise the institution within
8 30 working days following its request for a report required by this
9 section, the institution may grant or renew staff privileges for the
10 physician and surgeon, psychologist, podiatrist, or dentist.

11 (c) Any institution described in subdivision (a) or its medical
12 staff ~~which~~ *that* violates subdivision (a) is guilty of a misdemeanor
13 and shall be punished by a fine of not less than two hundred dollars
14 (\$200) nor more than one thousand two hundred dollars (\$1,200).

15 SEC. 5. Section 805.6 is added to the Business and
16 Professions Code, to read:

17 805.6. (a) The Medical Board of California, the Osteopathic
18 Medical Board, and the Dental Board of California shall establish
19 a system of electronic notification that is either initiated by the
20 board or can be accessed by qualified subscribers, and that is
21 designed to achieve early notification to qualified recipients of the
22 existence of new reports that are filed pursuant to Section 805.

23 (b) The State Department of Health Services shall notify the
24 appropriate licensing agency of any reporting violations pursuant
25 to Section 805.

26 SEC. 6. Section 805.7 is added to the Business and
27 Professions Code, to read:

28 805.7. The Medical Board of California shall work with the
29 Citizen Advocacy Center and the Center for Public Interest Law
30 to establish a pilot program to develop a cooperative relationship
31 between peer review bodies and licensing agencies to provide
32 remedial training and education to licentiates who have been the
33 subject of a peer review proceeding in which the peer review body
34 found no medical disciplinary cause or reason for the action.

35 (b) The Medical Board of California shall report to the
36 Legislature its findings and recommendations regarding the
37 implementation of this pilot program before January 31, 2002.

